residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

Section 1404(a) of the Judicial Code, 28 U.S.C.A. Sec. 1404(a) reads as follows:

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

C. Pertinent Decisions of This Court

In chronological order, the pertinent decisions of this Court are the following:

Baltimore & Ohio R. Co. v. *Kepner*, 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28.

Miles v. *Illinois Cent. R. Co.*, 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129.

Ex Parte Collett, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207.

Boyd v. *Grand Trunk Western R. Co.*, 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55.

State of Missouri ex rel Sou. Ry. Co. v. *Mayfield*, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3.

These decisions we shall discuss as briefly as possible, seratim.

Baltimore & Ohio R. Co. v. *Kepner*, *supra*, arose on a bill filed in an Ohio State Court by the railroad company to en-

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA AND BRIEF IN SUPPORT OF PETITION.

RICHARD M. MAXWELL,
THOMAS J. LEWIS,
First National Bank Bldg.,
Atlanta, Georgia,
Attorneys for Petitioners.

THOMAS J. LEWIS, JR.,
First National Bank Bldg.,
Atlanta, Georgia,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

To The Honorable Chief Justice of the United States and to The Honorable Associate Justices of The Supreme Court of the United States:

Petitioner, N. E. Pope, et al., prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered in the above cause (R. 22) on May 13, 1952 and numbered and entitled in said Court "Atlantic Coast Line Railroad Company, Plaintiff-in-error vs. N. E. Pope, et al., Defendant-in-error, Number 17843". Petition for rehearing was denied by said Court on June 11, 1952 (R. 23) at which time the judgment of said Court became final.

I. Jurisdiction

The jurisdiction of this Court is founded on Title 28 United States Code, Sec. 1257(3), a right being especially claimed under the statutes of the United States, viz, 45 U. S. C. Sec. 56, 45 U. S. C. A. Sec. 56.

II. Statutes Involved

This case involves the Federal Employers' Liability Act (45 U. S. C. Sec. 51-59) and the Forum Non Conveniens section of the Judicial Code (28 U. S. C. Sec. 1404(a)).

III. Question Presented

The question presented is whether or not a resident of Georgia can be enjoined by a Court of the State of Georgia from proceeding with the prosecution of an action brought under the Federal Employers' Liability Act in a Court of the State of Alabama.

IV. Summary Statement of Matter Involved

Petitioner, a resident of Ben Hill County, Georgia, sued Respondent in the Circuit Court of Jefferson County, Alabama, under the Federal Employers' Liability Act for injuries sustained in Ben Hill County, Georgia.

Approximately five months later Respondent filed suit in Ben Hill County, Georgia, to enjoin Petitioner from further prosecuting the Alabama suit on the grounds of expense, inconvenience, vexatiousness, harassment, burden on interstate commerce, more convenient forum in Georgia, and impeding the operation of Respondent's railroad and the national defense effort.

Petitioner demurred generally to Respondent's petition and, after hearings, the Judge of Superior Court sustained the demurrer but granted supersedeas and enjoined Petitioner from further proceeding with the Alabama ac-

tion pending final decision of the case by the Supreme Court of Georgia and receipt of remittitur therefrom.

On appeal, the Supreme Court of Georgia reversed and Petitioner's motion for rehearing was denied. Petitioner's motion for stay of remittitur was granted to permit this Petition for Certiorari.

V. Reasons for Allowance of Writ

1. The case here involves two statutes of the United States; 45 U. S. C. A. Sec. 56 and 28 U. S. C. A. Sec. 1404(a). Through it this Court has the opportunity to decide what effect, if any, the enactment by the Congress of Section 1404(a) of the Judicial Code had upon Section 56 of 45 U. S. C. A. (The Federal Employers' Liability Act) as applied by this Court in *Miles* v. *Illinois Central Railroad Company*, 315 U. S. 698, 62 S. Ct. 829, 86 L. Ed. 1129.

This is a federal question of substance not heretofore determined by this Court.

2. The Supreme Court of Georgia and the Supreme Court of Florida have rendered conflicting opinions and have reached opposite conclusions in considering the question. *Atlantic Coast Line Railroad Company* v. *Pope*, (1952) — Ga. —, 71 S. E. (2d) 243 (this case), and *Atlantic Coast Railroad Company* v. *Wood*, — Fla. —, (1952), 58 So. (2d) 540. Such a conflict between the highest courts of the States can only be resolved by a decision of this Court, and should be resolved in order to bring about uniformity in federal rights granted by a federal Act.

Prayer

WHEREFORE, Petitioner prays that this petition be granted, and for such other and further relief in the premises as may be proper and just.

This the 27th day of August, 1952.

THOMAS J. LEWIS,
RICHARD M. MAXWELL,
Attorneys for Petitioner.

THOMAS J. LEWIS, JR.,
Of Counsel,
1203 First National Bank Bldg.,
Atlanta, Georgia.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I. Opinion Below

The opinion of the Supreme Court of Georgia has not yet been officially reported, but is set forth in 71 S. E. (2d) 243 and in the Record, p. 12.

II. Jurisdiction of Court

The jurisdiction of this Court is invoked under Title 28 U. S. Code Sec. 1257 (3), a final judgment having been rendered by the Supreme Court of Georgia, the highest court of the state in which a decision could be had, wherein a right, privilege and immunity is set up and claimed by Petitioner under a statute of the United States, viz, Title 45 U. S. Code Sec. 56, 45 U. S. C. A. Sec. 56.

III. Statement of the Case

On or about the 20th of August, 1951, Petitioner, a resident of Georgia, brought suit against Respondent, a Virginia Corporation, doing business in Jefferson County, Alabama, in the Circuit Court of Jefferson County, Alabama, under the Federal Employers' Liability Act (45 U. S. C. A. Sec. 51 et seq.) for personal injuries sustained in Ben Hill County, Georgia.

Thereafter and on or about December 12, 1951 Respondent filed suit for injunction against Petitioner in the Ben Hill Superior Court, Georgia, to enjoin Petitioner from further prosecuting his suit in the Circuit Court of Jefferson County, Alabama (R. 1). The petition alleged that plaintiff is a Virginia Corporation subject to service of process in Ben Hill County, Georgia (R. 1); that defendant is a resident and citizen of Ben Hill County, Georgia (R. 1); that defendant has sued plaintiff in the Circuit Court of Jefferson County, Alabama, copy of petition herein attached (R. 1, 2); that defendant could have sued plaintiff on his cause of action in the state courts of Georgia as well as in the District Court of the United States for the Middle District of Georgia (R. 2); that plaintiff's witnesses in the case reside in Ben Hill County, Georgia (R. 2); that defendant has no witness residing outside of Ben Hill County, Georgia (R. 2); that if the action is tried at Birmingham, Alabama, it will be necessary for plaintiff to transport not less than six witnesses a distance of 313 miles or more and maintain them there at large expense (R. 3); that at a trial in Birmingham, Alabama, plaintiff could not compel the attendance of witnesses, whereas, it could do so were trial in Georgia (R. 3); that trial in Birmingham, Alabama, would require the absence of essential employees of plaintiff which would seriously interrupt the operation of plaintiff's railroad, whereas, trial in Georgia would entail their absence

from duty for only a short time (R. 3); that trial at Birmingham, Alabama would unreasonably and inequitably burden and harass plaintiff and subject it to unnecessary and unreasonable inconvenience and expense and burden interstate commerce, impede the national defense effort (R. 4) and would needlessly, vexatiously and irreparably damage plaintiff (R. 4); that defendant sued plaintiff at Birmingham for the purpose of vexatiously harassing plaintiff and subjecting it to unreasonable inconvenience and expense (R. 4); that the dockets in Ben Hill County, Georgia are uncongested and to allow the action to proceed in Alabama would impose expense and undue burden upon the citizens and courts of that state in a matter in which they have no interest (R. 4, 5); that defendant was advised to retain counsel in Alabama by his Brotherhood representatives (R. 5); that during the past twenty-four months defendant's counsel in Alabama filed ten suits against plaintiff under the Federal Employers' Liability Act, in all except one of which suits the plaintiff was a non-resident of Alabama and the cause of action occurred outside of Alabama (R. 5); that defendant's acts are contrary to equity and good conscience and plaintiff has no adequate remedy at law (R. 6). The petition prayed for filing and process, for appointment of a guardian ad litem for defendant (a minor), for temporary restraining order and, upon trial, a permanent injunction restraining and enjoining defendant from prosecuting his actions against plaintiff in Jefferson County, Alabama, for rule nisi, and other relief as may be equitable and just (R. 6, 7).

Rule nisi was issued.

Defendant filed a general demurrer to the petition (R. 10).

Upon hearing the trial judge sustained the general demurrer but granted supersedeas and enjoined defendant from further proceeding or prosecuting the Alabama action until such time as final judgment should be rendered by the

Supreme Court of Georgia and its remittitur received by the trial court (R. 11).

On appeal the Supreme Court of Georgia held the petition good against general demurrer and reversed it (R. 12). Judgment was so rendered (R. 22).

Motion by defendant for rehearing was made (R.) and denied (R. 23).

Petition by defendant for stay of remittitur to permit this Petition was filed and order entered granting such stay.

IV. Specification of Errors

We respectfully submit that the Supreme Court of Georgia was in error:

(a) In reversing the judgment of the Superior Court sustaining the general demurrer.

(b) In holding that the petition in the Superior Court set forth a cause of action.

(c) In holding that a Court of the State of Georgia may enjoin a Georgia citizen from prosecuting an action under the Federal Employers' Liability Act in the court of another state.

(d) In holding that the decisions of this Court in *Baltimore & Ohio Railroad Co.* v. *Kepner*, 314 U. S. 44, 62, S. Ct. 6, 86 L. Ed. 28 and in *Miles* v. *Illinois Central Railroad Co.*, 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129 were nullified by the enactment of section 1404(a) of the Judicial Code as applied in *Ex parte Collett*, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207.

(e) In refusing to follow the decision of this court in *Boyd* v. *Grand Trunk Western Railroad Co.*, 338 U. S. 263, 70 S. Ct. 26, 94 L. Ed. 55.

(f) In holding that the decisions of this Court in *Baltimore & Ohio Railroad Co.* v. *Kepner, supra*, and *Miles* v. *Illinois Central Railroad Co.*, were overruled by *State of Missouri ex rel Southern Ry. Co.* v. *Mayfield*, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 3.

V. ARGUMENT

A. Introduction and Summary

Have *Baltimore & Ohio Railroad Co.* v. *Kepner*, 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28 and *Miles* v. *Illinois Central Railroad Co.*, 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129 been transcended and overruled by the enactment of 28 U.S.C.A. Sec. 1404(a) and the decisions in *Ex Parte Collett*, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. 1207 and *State of Missouri ex rel Southern Railway Co.* v. *Mayfield*, 340 U. S. 1, 71 S. Ct. 1, 95 L. Ed. 31?

The Supreme Court of Georgia, in deciding this case, so held.

The Supreme Court of Florida in *Atlantic Coast Line Railroad Co.* v. *Wood*, — Fla. —, 58 So. (2d) 549 (April 4, 1952) held to the contrary. That, we submit, is the correct view.

And while it is not possible to reconcile the decisions of those two Courts, we believe that it is possible to reconcile the decisions (but not all of the opinions) of this Court if, and only if, it is recognized that the doctrine of forum non conveniens is a principal separate and apart from the injunction to restrain an inequitable suit in a foreign court, and that Section 1404(a) is a forum non-conveniens statute applicable only in Federal Courts.

B. The Statutes Involved

Two Federal statutes are involved: Section 6 of the Federal Employers' Liability Act, 45 U.S.C.A. Sec. 56 reads as follows:

> "No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.
>
> "Under this chapter an action may be brought in a district court of the United States, in the district of the

join Kepner, its employee, from prosecuting a suit in the United States District Court for the Eastern District of New York under the Federal Employers' Liability Act. Kepner was a resident of Ohio and the injury occurred in Ohio.

The petition, to a great extent, set forth facts similar to those alleged by the Respondent in its petition in the Ben Hill County Superior Court; suitable courts open to the employee where he resided and where the injury occurred, suit by the employee in a court distant from his residence and from the place of the accident, expense, undue burden on interstate commerce, and unreasonable, improper and inequitable burden on the railroad.

Holding against the railroad company this Court, in a 6-3 decision said, after citing and discussing the history of Sec. 6 of the Liability Act, supra:

> "The privilege (to sue the carrier wherever it is doing business) was granted because the general venue provisions worked injustice to employees. It is obvious that no state statute could vary the venue and we think equally true that no state court may interfere with the privilege for the benefit of the carrier or the national transportation system, on the ground of inequity based on cost, inconvenience or harassment. When the section was enacted it filled the entire field of venue in federal courts. A privilege granted by the legislative body which created this right of action cannot be frustrated for reasons of convenience or expense. . . . Whatever burden there is here upon the railroad because of inconvenience or cost does not outweigh the plain grant of privilege for suit in New York." (Parenthetical language supplied.)

Miles v. *Illinois Cent. R. Co., supra,* was founded on substantially identical facts to those in Kepner's case except that the suit sought to be enjoined was pending in a distant state court.

Reversing the judgment below granting the injunction the court said:

> "Since the existence of the case of action and the privilege of vindicating rights under the F.E.L.A. in state courts spring from federal law, the right to sue in state courts of proper venue where their jurisdiction is adequate is of the same quality as the right to sue in federal courts. It is no more subject to interference by state action than was the federal venue in the Kepner case. . . .
>
> "If suits in federal district courts at those points (Where the carrier is doing business) do not unduly burden interstate commerce, suits in similarly located state courts cannot be burdensome. As Congress has permitted both the state and federal suits, its determination that the carriers must bear the incidental burden is a determination that the state courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable." (Parenthetical language supplied.)

Thereafter, in 1948, Congress revised and codified the Judicial Code and in so doing enacted Section 1404(a), *supra*.

The impact of that enactment upon Section 6 of the Liability Act was first considered by this Court in *Ex Parte Collett, supra*. There suit was brought under the Act in a United States District Court in Illinois. The railroad filed a motion under 1404(a) to transfer the case to a United States Court in Kentucky and, on a finding of facts which brought the case within the code section, the court below granted the motion. Collett then came to this court with petitions for writs of mandamus and prohibition and rules nisi therein. Thus, the span of that case was entirely in the federal area.

Denying the relief sought by the Petitioner, this Court held that the sweep of the phrase "any civil action" contained in Section 1404(a) was broad enough to include Federal Employers' Liability Act cases. It pointed to the *Kepner* and *Miles* decisions in saying that prior to the revision of Title 28 of the United States Code, *forum non conveniens* was not available in such cases and said:

> "Section 6 of the Liability Act defines the proper forum; Sec. 1404(a) of the Code deals with the right to transfer an action properly brought. The two sections deal with two separate and distinct problems. Section 1404(a) does not limit or otherwise modify any right granted in Section 6 of the Liability Act or elsewhere to bring suit in a particular district. Any action may still be brought in any court, state or federal, in which it might have been brought previously.
>
> "The Code, therefore, does not repeal Section 6 of the Federal Employers' Liability Act. We agree with Petitioner that Congress had no such intention, as demonstrated by its failure to list the section in the meticulously prepared schedule of statutes repealed.".

There next came to this Court the case of *Boyd* v. *Grand Trunk Western Railroad Co., supra.* Boyd had sued the railroad under the F. E. L. A. in the state court of Illinois and the railroad sought an injunction in the state court in Michigan against prosecution of the Illinois action.

Contrary to the comment on that case by the Supreme Court of Georgia in the opinion below in the case at bar, virtually all of the bases for the injunction were pleaded in the Michigan suit that are pleaded in the petition by the railroad in this case, —— Mich. ——, 33 N. W. (2d) 120 at 122, and, in addition there was an agreement by Boyd in consideration of advances to him by the railroad to sue only in Michigan.

By striking down the agreement (which this Court did) that case is absolutely parallel to the case at bar, both on its facts and in its procedural course through the Courts and it was decided subsequent to the enactment of Section 1404(a).

Thus the stage was set for this Court to bring into play Section 1404(a) in state court F. E. L. A. cases had it seen fit to do so. But it did not. It held that the agreement to sue only in Michigan was in contravention of Sec. 5 of the Liability Act (45 U. S. C. A. Sec. 55) and said:

> "And nothing in Ex Parte Collett, 1949, 337 U. S. 55, 69 S. Ct. 944, affects the initial choice of venue afforded Liability Act plaintiffs. We stated expressly that the section of the Judicial Code there involved, 28 U. S. C. Sec. 1404(a), 28 U. S. C. A. Sec. 1404(a), 'does not limit or otherwise modify any right granted in Section 6 of the Liability Act or elsewhere to bring suit in a particular district. An action may still be brought in any court, state or federal, in which it might have been brought previously.' 337 U. S. at page 60, 69 S. Ct. at page 947."

Finally came *State of Missouri ex rel Southern Ry. Co.* v. *Mayfield, supra* (two cases), in which actions were brought under the F. E. L. A. in state trial courts and the railroads' motions to dismiss on *forum non conveniens* grounds were denied, whereupon the railroads filed original proceedings in mandamus in the Supreme Court of Missouri to compel the trial judges to exercise their discretion on the motions.

In the view of a majority of this Court the Supreme Court of Missouri was impelled to decide against the railroads because of the thrust of the *Kepner* and *Miles* decisions. Holding that each state is free to decide for itself the applicability, in its courts, of the principle of *forum non conveniens*, the Court vacated and remanded for further proceedings in the Supreme Court of Missouri.

As we interpret the majority opinion it says, in effect, that Section 1404(a) had no place in the consideration of the question before the Court:

> "There was nothing in that Act (the Liability Act) even prior to Section 1404(a) of the 1948 revision of the Judicial Code, 28 U. S. C., 28 U. S. C. A. which purported 'to force a duty' upon the state courts to entertain or retain Federal Employers' Liability litigation 'against an otherwise valid excuse.' *Douglas* v. *New York, New Haven R. Co., supra*, 279 U. S. at page 388, 48 S. Ct. at page 356, 73 L. Ed. 747."

On remand the Supreme Court of Missouri held that since it was the policy of the state to permit citizens of Missouri to maintain suits in its courts under the Liability Act it could not bar citizens of other states from doing likewise, —— Mo. ——, 240 S. W. (2d) 106, and this Court denied certiorari to review that decision, 342 U. S. 871, 72 S. Ct. 107, 96 L. Ed. 51.

Before getting into the language of the opinions which recognize the distinction between the injunction suit and the doctrine of *forum non conveniens* we should like to quote the definition of the latter as expressed in *Gulf Oil Corp.* v. *Gilbert*, 1947, 330 U. S. 501, 67 S. Ct. 839, 91 L. Ed. 1055:

> "The principle of *forum non conveniens* is simply that a court may resist imposition upon its jurisdiction, even when jurisdiction is authorized by the letter of a general venue statute."

This must mean that the only court in which *forum non conveniens* has a place is in the court in which the suit is initially brought—in this case, the court in Alabama—and that the doctrine is not applicable by the indirect route of injunction. It is especially important here because Alabama would not recognize the doctrine were it pleaded in *Pope's* case there. *Ex parte State ex rel. Southern Ry.*

Co., —— Ala. ——, 47 So. (2d) 249, *Ex parte, State ex rel. Atlantic Coast Line R. Co.*, —— Ala. ——, 47 So. (2d) 251.

This Court has drawn the line between injunction and and *forum non conveniens* on several occasions.

In the *Miles* case, 315 U. S. at page 704, 62 S. Ct. at page 831, 86, L. Ed. at page —, Mr. Justice Reed for the majority said:

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally as was approved in the Douglas or Chambers cases, note 6 supra. We are considering another state's power to so control its own citizens that they cannot exercise the federal privilege of litigating a federal right in the court of another state."

In the same case Mr. Justice Jackson, concurring, expressed the same thought, 315 U. S. at page 708, 62 S. Ct. at page 832, 86 L. Ed. at page ——, in this language.

> "Even if Missouri, by reason of control of its own courts, might refuse to open them to such a case, it does not follow that another state may close Missouri's courts to one with a federal cause of action. If Missouri elects to entertain the case, the courts of no other state can obstruct or prevent its exercise of jurisdiction as conferred by the federal statute or its right to obtain evidence or distribute the proceeds, if any in accordance with the Federal Employers Liability Act."

Mr. Justice Frankfurter said, dissenting in the *Miles* case, apparently with the distinction between injunction and *forum non conveniens* in mind, 315 U. S. at page 710, 62 S. Ct. at page 833, 86 L. Ed.:

> "The Kepner decision cast no cloud upon Douglas *v.* New York, New Haven R. Co., 279 U. S. 377, 49 S. Ct.

355, 73 L. Ed. 747, which sustained the power of a state to apply the principle of forum non conveniens to suits under the Act brought in its courts of non-residents."

As between injunction and *forum non conveniens* the cases align themselves so:

Injunction Cases:

Baltimore & Ohio R. Co. v. *Kepner, supra.*
Miles v. *Illinois Cent. R. Co., supra.*
Boyd v. *Grand Trunk Western R. Co., supra.*

Forum Non Conveniens Cases:

Ex Parte Collett
State ex rel. Southern Railwdy Co. v. *Mayfield.*

Section 1404(a) of the Judicial Code, 28 U. S. C., [illegible] U. S. C. A., is a *forum non conveniens* statute for application only in the Federal Courts. It is so phrased: ". . . a district court may transfer . . . to any other district or division . . .". The variances in pleading and practice between the several states would make it impracticable, if not impossible, for the courts of the state to transfer a case to the courts of another state. And with *Douglas* v. *New York, New Haven R. Co.*, 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, standing unimpaired it was unnecessary for Congress to attempt to authorize State courts to adopt the principle of *forum non conveniens*, even though it had been able to overcome the doubts as to constitutionality expressed by the Attorney General. Note 18 to *Ex Parte Collett*, quoted below.

Yet the burden which Respondent must necessarily shoulder here is that Congress meant vastly more than it said, that it intended to include State Courts as well as Federal Courts in enacting Section 1404(a).

Thus, in the light of the foregoing, we submit that the judgment of the Supreme Court of Georgia is final and is subject to review by this Court.

Respectfully,

RICHARD M. MAXWELL
THOMAS J. LEWIS
Attorneys for Petitioner,
1203 First National Bank Building
Atlanta, Georgia

THOMAS J. LEWIS, JR.
Of Counsel.

It seems to us that Mr. Chief Justice Vinson denied the validity of Respondent's position here when he said, in *Ex Parte Collett*, 337 U. S. at page 64, 69 S. Ct. at page 949, 93 L. Ed. at page 1213:

> "But the Jennings Bill was far more drastic than Section 1404(a). The Jennings Bill would in large part have repealed Section 6 of the Liability Act. It would have delimited the available forum for actions brought in state as well as federal courts.[18] . . . Inasmuch as none of these changes in the law was contained in the Code. . . ."

Therefore, we submit, Section 6 of the Liability Act, Sec. 1404(a) of the Judicial Code, and all of the decisions can only stand together unimpaired by a recognition of the difference between injunction and *forum non conveniens*. The Supreme Court of Utah, in *Mooney* v. *Denver & R. G. W. R. Co.*, — Utah —, 221 Pac. (2d) 629 at 640, 641, after reviewing the many decisions, both State and Federal, expressed itself on the point in these words:

> "While the United States Supreme Court has held that one state may not enjoin one of its citizens from prosecuting a cause of action under a F. E. L. A. statute in another state or Federal court, there are principles other than forum non conveniens involved in those holdings. There is the problem that Congress has permitted suit in the courts of all states and there may

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[18] As one of the three grounds of opposition to the Jennings Bill, one minority report stated, "The bill restricts state courts in the administration of justice, deprives them of their prerogatives to require change of venue of lawsuits where necessary, and transcends the provisions of State laws governing the jurisdiction of State courts." H.R. Rep. No. 613, 80th Cong., 1st Sess. 1 (part) 2 (1947).

Doubt was expressed that Congress had constitutional power so to affect state courts. See, e. g. letter of Acting The Assistant to the Attorney General, Hearings before Senate Committee on the Judiciary on S. 1567 and H.R. 1639 (Jennings Bill) 80th Cong., 2nd Sess., 215 (1948).

be some limitation in a state's right to prevent its citizens from taking advantage of rights given by federal statutes when the state entertaining the suit is willing to assume jurisdiction. That question involves principles separate and distinct from the right of a state to attach some conditions to the use of its courts by non-residents.

"In order to reconcile the doctrine announced in the case of Douglas v. New York, N. H. & H. R. Co., supra, with the holdings in the other cases and for us to give full force and effect to the language used in each of the decisions we must necessarily conclude that the United States Supreme Court has held that prior to the enactment of Section 1404(a) the doctrine of forum non conveniens was unavailable in the Federal Court system because of the special venue provisions; that in state courts the doctrine was available in all types of cases; and, that even though available under state procedures the doctrine could not be used by a sister state as the foundation for enjoining a resident from using the courts of another state which was willing to keep its courts open for F. E. L. A. litigants."

Conclusion

At the time Congress enacted section 1404(a) of the Judicial Code each state was free to apply its policy of *forum non conveniens* in Federal Employers' Liability Act cases in its own courts, *Douglas* v. *N. Y. N. H. R. Co., supra*, and no state court could enjoin a citizen of its state from proceeding under the Liability Act in the Federal court of another state, *Baltimore & Ohio R. Co.* v. *Kepner, supra*, or in the state court of another state, *Miles* v. *Illinois, Cent. R. Co., supra*, for reasons of convenience, burden on inter-state commerce, vexatiousness, harassment, etc. *Forum non conveniens* was not available in Federal courts in Federal Employment Liability Act cases. *Ex parte Collett, supa.*

Section 1404(a) of the Code merely empowered Federal District Courts to transfer a case to another District or Division for the convenience of parties and witnesses and in the interest of justice.

Ex parte Collett, supra, held that 1404(a) applies to Federal Employers' Liability Act suits in the Federal courts—nothing more can be drawn from that decison. It was a 1404(a) case in the Federal courts, and had nothing whatever to do with injunction and at no point did it touch a state court.

Boyd's case was an injunction case in the state courts, as is the case here. It was decided subsequent to the enactment of 1404(a), and this court there held that even though the employee had agreed to sue only in Michigan, the Michigan courts could not restrain him from maintaining his suit in Illinois.

The *Mayfield* case was in the state courts on forum non conveniens and merely reiterated the rule of *Douglas* v. *N. Y., N. H. R. Co.* that local law is applicable in such cases.

The *Miles* and *Boyd* cases are directly in point here. *Miles'* case was decided prior to 1404(a); *Boyd's* case was decided subsequent to 1404(a). That code section did not change the law expressed in the *Miles* case, otherwise the result of the *Boyd* case would necessarily have been different.

We submit that the decision of the Supreme Court of Georgia should be reversed. Any other conclusion would permit the courts of one state to apply their policy of *forum non conveniens* in the courts of another state. No opinion of any member of this Court in any case has gone that far. The language which the Supreme Court of Georgia quotes from Mr. Justice Jackson's concurring opinion in *Mayfield* must be read in the context in which it was written—a *forum non conveniens* case in the State Court of Missouri.

Alabama is willing to hear *Pope's* case. It is not for Georgia to say that it shall not do so.

Respectfully submitted,

RICHARD M. MAXWELL,
THOMAS J. LEWIS,
Attorneys for Petitioners,
1203 First National Bank Building,
Atlanta, Georgia.

THOMAS J. LEWIS, JR.,
Of Counsel.

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